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CLERK.

SUPREME COURT OF THE UNITED STATES.

[redacted]

No. 5 Orig
~~No. 12, Original.~~ O. T. 1907

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

JOHN F. SHIPP ET AL.

The Answer of Joseph F. Shipp, Sheriff of Hamilton County, Tennessee, and His Deputies to the Suggestion of the Attorney General that the Testimony in this Case be Taken at Washington, D. C.

JUDSON HARMON,
CLIFT & COOKE,
ROBERT PRITCHARD,
Attorneys for Defendants.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 25110

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

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THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

JOHN F. SHIPP AND OTHERS, DEFENDANTS.

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The Attorney General asks this court to reconsider its order designating Chattanooga as the place of taking testimony in this case, and requests that the city of Washington be designated, at least for the purpose of taking testimony of witnesses for the United States.

And now come the defendants, Joseph F. Shipp, Frank Jones, Matthew Galloway, C. A. Baker, T. V. Taylor, Fred Frawley, George Brown, Jeremiah Gibson, Marion Perkins, and Joseph Clark, defendants, being the said sheriff and his deputies, and respectfully show to the court that the granting of said request would work great hardship upon them and might result in actual injustice.

These defendants were, at the time of the happening of the matters and things complained of in the information of the Attorney General, officers of Hamilton county, Tennes-

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These defendants were, at the time of the happening of the matters and things complained of in the information of the Attorney General, officers of Hamilton county, Tennes-

see, sworn to uphold the law, and occupying positions which the public welfare required should be filled by persons who respected the law, and who would obey it.

The information not only charges them with failure to uphold the law, but with having become parties to a conspiracy to dethrone the law and substitute in its place mob violence, the antithesis of law.

A conviction of these defendants under the charges of the information involves not only the crime and infamy of perjury, but the guilt of conspiracy to murder.

These defendants have heretofore, prior to the filing of the information in this case, enjoyed the respect and confidence of their fellow-citizens, and it is of the utmost importance to them that their good names be not destroyed unless they are convicted after a full, fair, and impartial trial.

It is not the purpose of the United States to inflict wrong upon any of its citizens however humble. These defendants verily believe that the granting of the request of the Attorney General would do them grievous wrong. Every one of these defendants is entitled to be confronted by the witnesses against him. It has been shown by affidavits that many of them are not able to attend the taking of the testimony at Washington. It would be impossible for all of the counsel for all of the defendants to be present all the time, and a false witness might escape proper cross-examination, and might leave an impression of truth. The presence of the defendants, when witnesses for the prosecution are being examined, is an important right, one that should not be denied. The defendants are not only entitled to the aid of counsel, but counsel are entitled to the assistance of the defendants.

It is true these defendants rest under a charge which must be tried, but they submit that they are entitled to a trial which will give them the right to be present so that they may have the privilege accorded to the meanest criminal, of being faced by their accusers. This right will be practically denied should the testimony be taken in Washington.

The Attorney General suggests that it may be fairly assumed that it is not wholly without their own fault that these defendants are placed in the position in which they would be placed were his request granted, but these defendants are unable to reconcile this assumption with the presumption of innocence which the law accords to them.

Answering the further suggestion that Washington is the proper place for the hearing of testimony because the court sits at Washington for the whole United States, these defendants say that the Court has already decided that it will not hear oral testimony and has allowed counsel for both parties to nominate a Commissioner to take the testimony.

The suggestion contained in paragraph three (3) is equally without merit because it is impossible to conceive of this tribunal allowing separate hearings on every "unexpected incident which may readily occur during the examination of witnesses," it being the duty of the Commissioner to act upon exceptions to testimony, as well as "unexpected incidents."

Finally, these defendants solemnly deny the averments contained in the fourth paragraph of the suggestion of the Attorney General. They deny that there is any foundation in fact for the serious and unusual charge, confessedly based upon secret information to which neither the defendants nor this honorable court have access, that Chattanooga is, for any reason, an unsuitable place to take the testimony of witnesses. They deny that the real facts cannot be elicited there in "a calm and dispassionate atmosphere." They deny that the testimony would be colored or suppressed by local prejudice or any sense of personal insecurity, or that full and frank utterance of the truth by witnesses for or against these defendants would be "stifled or checked." Whatever may be the character of the "confidential information" to which the Attorney General refers, these defendants deny that any witness for the United States could reasonably, or would, in fact, entertain any apprehension whatever of danger if he testified at Chattanooga.

Defendants respectfully submit that the charges contained in said paragraph 4 that the feelings of the community are excited, that the truth would be suppressed from prejudice or from a sense of personal insecurity, or from any other cause, are based upon information of an unreliable character or upon a mistaken conception of the facts.

The "confidential" character of the information referred to by the Attorney General precludes an investigation of its reliability by these defendants; but in opposition thereto these defendants present herewith the affidavits of D. L. Snodgrass, J. W. Bachman, C. A. Lyerly, Wm. L. Frierson, J. T. Moseley, T. S. Wilcox, G. G. Fletcher, and M. M. Allison, whose positions in the community indicate their character and standing.

Wherefore, these defendants and each of them, most humbly pray that the request of the Attorney General be denied.

JOSEPH F. SHIPP.
FRANK JONES.
MATTHEW GALLOWAY.
C. A. BAKER.
T. B. TAYLOR.
FRED FRAWLEY.
GEORGE BROWN.
JEREMIAH GIBSON.
MARION PERKINS.
JOSEPH CLARK.

JUDSON HARMON,
CLIFT & COOKE,
ROBERT PRITCHARD,
Attorneys for Defendants.

STATE OF TENNESSEE, *Hamilton County.*

Before me, the undersigned authority, this day personally appeared Joseph F. Shipp, Frank Jones, Matthew Galloway, C. A. Baker, T. B. Taylor, Fred Frawley, George Brown, Jeremiah Gibson, Marion Perkins, and Joseph Clark, the defendants above named, who being first duly sworn, deposed and say, that all and singular, the statements made in the foregoing answer are true to the best of their knowledge, information and belief.

JOSEPH F. SHIPP.
FRANK JONES.
M. L. GALLOWAY.
CHAS. A. BAKER.
THOS. B. TAYLOR.
GEO. W. BROWN.
M. PERKINS.
F. T. FRAWLEY.
JOSEPH CLARK.
JERRY GIBSON.

Sworn to before me and subscribed in my presence this 29th day of January, A. D. 1907.

C. L. HAYES, [SEAL.]
Notary Public.

STATE OF TENNESSEE, *Hamilton County:*

Before me, the undersigned, a notary public in and for the county and State aforesaid, this day personally came D. L. Snodgrass, J. W. Bachman, C. A. Lyerly, W. L. Frierson, John T. Moseley, T. S. Wilcox, G. G. Fletcher, and M. M. Allison, who, after being duly sworn, severally deposed and said:

That they and each of them are citizens and residents of Hamilton county, Tennessee;

And the said D. L. Snodgrass deposes and says that he has resided in Chattanooga, Tennessee, for 24 years; that he is

the clerk of the circuit court of the United States for the eastern district of Tennessee; that he has held several political and judicial offices, having been for 16 years one of the judges of the Supreme Court of the State and for more than 8 years its chief justice;

And the said J. W. Bachman deposes and says that he has resided in Chattanooga, Tennessee, for more than 30 years, during all of which time he has been the pastor of the First Presbyterian Church of Chattanooga;

And the said C. A. Lyerly deposes and says that he has resided in Chattanooga, Tennessee, for more than 20 years, and has been connected with several financial and business establishments, being for 18 years the president of the Chattanooga National Bank, and that he is now the president of the First National Bank of Chattanooga;

The said W. L. Frierson deposes and says that he has resided in Chattanooga, Tennessee, for more than 16 years, where he has practiced law, and that he is now the mayor of the city of Chattanooga;

The said J. T. Moseley deposes and says that he has resided in Chattanooga, Tennessee, for more than 16 years, and that he is now the chief of police of said city;

The said T. S. Wilcox deposes and says that he has resided in Chattanooga, Tennessee, for more than 35 years, and that he is now president of the board of public safety of said city;

And the said G. G. Fletcher deposes and says that he has resided in Chattanooga, Tennessee, for 22 years, and that he is now the president of the chamber of commerce of said city;

The said M. M. Allison deposes and says that he has resided in Chattanooga, Tennessee, for more than 4 years, and that he is now, and for the past 4½ years has been the judge of the circuit court of Hamilton county, Tennessee;

And the said D. L. Snodgrass, J. W. Bachman, C. A. Lyerly, W. L. Frierson, J. T. Moseley, T. S. Wilcox, G. G. Fletcher, and M. M. Allison, each severally deposes and says that he is acquainted with the people of Chattanooga, and

the conditions and sentiments of the community; that he does not believe that any excitement, local prejudice or other conditions exist at Chattanooga, which would in any way tend to make it an improper place for taking the testimony of the witnesses in the case of The United States against J. F. Shipp and others; that he knows of no excitement in the community over this case, or over the Johnson case, which would tend to prevent a full and fair expression of truth by any witness that might be examined for the prosecution or the defense; that there is no danger and no reason to apprehend danger to any witness who may testify at Chattanooga, whatever may be his testimony; and no facts exist which would tend to produce any apprehension of danger on the part of any witness that may be called to testify there.

D. L. SNODGRASS.
J. W. BACHMAN.
C. A. LYERLY.
WM. L. FRIERSON.
J. T. MOSELEY, *C. P.*
T. S. WILCOX.
G. G. FLETCHER.
M. M. ALLISON.

Sworn to and subscribed before me, this 30th day of January, 1907.

[SEAL.]

T. T. RANKIN,
Notary Public.